

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 RICHARD MATHIS, *et al.*,

4 Plaintiffs,

5 v.

6 COUNTY OF LYON, *et al.*,

7 Defendants.
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Case No. 2:07-cv-00628-APG-GWF

**ORDER ON DEFENDANT GLOVER'S
MOTION FOR RECONSIDERATION**

(ECF No. 463)

10 Defendant Richard Glover moved for a stay without the need to post a supersedeas bond.
11 ECF No. 405. I denied that request. ECF No. 458. Glover now moves for reconsideration of my
12 denial based upon a newly-submitted affidavit (the "Carlson Affidavit") attesting that the Nevada
13 Public Agency Insurance Pool (NPAIP) will pay for any judgment entered against Glover. ECF
14 No. 463.

15 Glover argues that the Carlson Affidavit is "newly-discovered evidence" within the
16 strictures of Federal Rules of Civil Procedure 59(e) and 60(b). ECF No. 467 at 3. I disagree.
17 "The overwhelming weight of authority is that the failure to file documents in an original motion
18 or opposition does not turn the late filed documents into 'newly discovered evidence.'" *Sch. Dist.*
19 *No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Glover does not
20 explain why he could not obtain the Carlson Affidavit or similar evidence at the time he
21 submitted his original motion. Nevertheless, to the extent that Rules 59(e) and 60(b) allow for
22 reconsideration to prevent manifest injustice or for "any other reason that justifies relief," I will
23 entertain the arguments in Glover's motion for reconsideration.

24 One reason I denied Glover's original motion was that I had no evidence that the county
25 or any other solvent entity would pay the judgment entered against him. ECF No. 458. The
26 Carlson Affidavit states that "[a]ny judgment in this case against Richard Glover will be paid by
27 the" NPAIP. ECF No. 463-2 at 2. The defendants object that the affidavit does not confirm that
28 the NPAIP is aware that the judgment was entered against Glover in his individual capacity and

1 that it includes punitive damages; nor is it a binding commitment that the NPAIP will pay the
2 award. ECF No. 465 at 5.

3 “[T]he party that won in district court should not be at risk of the money disappearing.
4 [The purpose of a supersedeas bond is] to protect the winner from the risk that the loser will not
5 have money if and when the judgment is affirmed” *Exxon Valdez v. Exxon Mobil*, 568 F.3d
6 1077, 1085 (9th Cir. 2009). However, a “district court may permit security other than a bond.”
7 *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1367 (9th Cir. 1990) (citation omitted).
8 Thus, if sufficient proof is offered that NPAIP will cover the entirety of the judgment amount
9 against Glover, I will grant a stay without the posting of a supersedeas bond. The Carlson
10 Affidavit does not provide sufficient assurance of that.

11 I will allow Glover to submit a new affidavit from Mr. Carlson containing adequate
12 assurances that the NPAIP will pay the judgment against Glover. That affidavit must confirm,
13 among other things, that Mr. Carlson is authorized to execute the affidavit and to bind the NPAIP,
14 that he has read the judgment against Glover and the subsequent award of attorneys’ fees and
15 costs, that the NPAIP will cover the entirety of the judgment entered against Glover in this case
16 (including all punitive damages, attorneys’ fees, costs, and pre- and post-judgment interest), and
17 that this coverage will apply even if the entire amount awarded jointly and severally is sought
18 against Glover alone. The affidavit also shall state whether there is any cap on the amount the
19 NPAIP will pay to satisfy the judgment against Glover, whether there is any risk that the NPAIP
20 will become insolvent, and the mechanism (and timing) by which the judgment will be paid.

21 Glover’s counsel shall send a draft of the proposed affidavit to the plaintiffs’ counsel and
22 to pro se plaintiff James Mathis. The parties shall confer in good faith as to the contents of the
23 affidavit. Once agreed upon, the affidavit shall be executed and filed in court. If the parties
24 cannot agree on appropriate language, Glover shall file the signed affidavit and the parties shall
25 submit briefs (not to exceed five pages each) explaining their respective positions regarding the
26 affidavit. The affidavit and briefs shall be filed no later than May 3, 2017.

1 IT IS THEREFORE ORDERED that defendant Richard Glover's motion for
2 reconsideration (ECF No. 463) is **GRANTED IN PART** as set forth above.

3 DATED this 19th day of April, 2017.

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6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
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